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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9
10 KIMBERLY GARRETT,
11 Plaintiff,

12 vs.

13 CREDIT ONE BANK, N.A.; and
14 DOES 1 through 10 inclusive,
15 Defendant(s).
16

Case No.:

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

(Unlawful Debt Collection Practices)

17 **COMPLAINT AND DEMAND FOR JURY TRIAL**

18 Plaintiff, Kimberly (“hereinafter Plaintiff”), through her attorneys, alleges
19 the following against Defendant, Credit One Bank, N.A. (“hereinafter
20 Defendant”).

21 **INTRODUCTION**

22 1. Count I of Plaintiff’s Complaint is based upon the Telephone Consumer
23 Protection Act (“TCPA”), 47 U.S.C. § 227. The TCPA is a federal statute that
24 broadly regulates the use of automated telephone equipment. Among other things,
25 the TCPA prohibits certain unsolicited marketing calls, restricts the use of

1 automatic dialers or prerecorded messages, and delegates rulemaking authority to
2 the Federal Communications Commission ("FCC").

3 2. Count II of Plaintiff's Complaint is based upon Rosenthal Fair Debt
4 Collection Practices Act ("RFDCPA"), CAL. CIV. CODE § 1788, which prohibits
5 debt collectors from engaging in abusive, deceptive and unfair practices in
6 connection with the collection of consumer debts.

7 **JURISDICTION AND VENUE**

8 3. Jurisdiction of the court arises under 15 U.S.C. § 1692k(d) and 47
9 U.S.C. § 227.

10 4. Venue is proper pursuant to 28 U.S.C. 1391(b)(2) in that a substantial
11 part of the events or omissions giving rise to the claim occurred in this District.
12 Because Defendant transacts business here, personal jurisdiction is established.

13 **PARTIES**

14 5. Plaintiff is a natural person residing in Long Beach, Los Angeles
15 County, California.

16 6. Plaintiff is a consumer as defined by *Cal. Civ. Code § 1788.2(h)*.

17 7. Defendant is a Banking institution engaged in the business of issuing
18 credit cards with its principal place of business located in Nevada and regularly
19 transacts business throughout the United States and California. Defendant may be
20 served with process at Credit One Bank, N.A., corporate headquarters located at
21 585 Pilot Road, Las Vegas, Nevada 89119.

22 8. Defendant engages in the practice of debt collection. Therefore is a
23 debt collector as that term is defined by *Cal. Civ. Code §1788.2(c)*, and sought to
24 collect a consumer debt from Plaintiff.
25

FACTUAL ALLEGATIONS

9. Defendant is attempting to collect a debt from Plaintiff.

10. In or around October of 2014, Defendant began placing calls to Plaintiff's cellular phone number (310) 406-7542, in an attempt to collect an alleged debt.

11. The calls came from (323) 331-9662, (208) 908-0901, (210) 739-6460, (520) 230-8405, (720) 580-0310, (361) 261-1850, (541) 647-6430, (725) 334-7210, (206) 519-6609 and (323) 400-4200; upon information and belief these numbers are owned or operated by Defendant.

12. During one of the October 2014 phone calls, Defendant informed Plaintiff that it was attempting to collect a debt.

13. During the same phone call, Plaintiff instructed Defendant to contact her attorney as a replacement for contacting her.

14. Between November 1, 2014 and January, 1 2015, Defendant proceeded to call Plaintiff on her cellular phone approximately 83 times from telephone numbers referenced in paragraph 11.

15. Furthermore, Defendant routinely contacted Plaintiff numerous times throughout the day even after she instructed Defendant to contact her attorney.

16. Defendant contacted Plaintiff eight (8) times, in one day, on November 24, 2014.

17. Additionally, Defendant contacted Plaintiff five (5) times the following day, on November 25, 2014.

18. Upon information and belief, approximately 83 calls were made by the Defendant to the Plaintiffs cellular phone after Plaintiff had initially instructed Defendant to contact her attorney.

COUNT I

(Violations of the TCPA, 47 U.S.C. § 227)

19. Plaintiff incorporates by reference all of the above paragraphs of the Complaint as though fully stated herein.

20. Defendant violated the TCPA. Defendant's violations include, but are not limited to the following:

(a) Prior to the filing of the action, on multiple occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which states in pertinent part, "It shall be unlawful for any person within the United States . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice — to any telephone number assigned to a . . . cellular telephone service . . . or any service for which the called party is charged for the call.

(b) Within four years prior to the filing of the action, on multiple occasions, Defendant willfully and/or knowingly contacted Plaintiff at Plaintiff's cellular telephone using an artificial prerecorded voice or an automatic telephone dialing system and as such, Defendant knowing and/or willfully violated the TCPA.

21. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is entitled to an award of five hundred dollars (\$500.00) in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that Defendant knowingly and/or willfully violated the TCPA, Plaintiff is entitled to an award of one thousand five hundred dollars (\$1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

COUNT II

**(Violation of the Rosenthal Fair Debt Collection Practices Act, CAL. CIV.
CODE § 1788)**

22. Plaintiff incorporates herein by reference all of the above paragraphs of the complaint as though fully set forth herein at length.

Defendant violated the RFDCPA. Defendant's violations include, but are not limited to, the following:

(a) Defendant violated CAL. CIV. CODE § 1788.11(d) by causing a telephone to ring repeatedly or continuously to annoy the person called; and

(b) Defendant violated CAL. CIV. CODE § 1788.11(e) by communicating, by telephone or in person, with the debtor with such frequency as to be unreasonable and to constitute an harassment to the debtor under the circumstances; and

(c) Defendant violated CAL. CIV. CODE § 1788.17 by collecting or attempting to collect a consumer debt without complying with the provisions of Sections 1692b to 1692j, inclusive, of . . . Title 15 of the United States Code (Fair Debt Collection Practices Act).

(i) Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692d by engaging in conduct, the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of the alleged debt; and

(ii) Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692d(5) by causing Plaintiff's phone to ring or engaging Plaintiff in telephone conversations repeatedly; and

(iii) Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692f by using unfair or unconscionable means in connection with the collection of an alleged debt.

